

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

ERIC HOUSTON,)	
)	
)	
Plaintiff,)	
vs.)	NO. CIV-11-0176-HE
)	
M. SHERMAN, et al.,)	
)	
Defendants.)	

ORDER

Plaintiff Eric Houston, a state prisoner appearing *pro se*, filed this § 1983 action and sought leave to proceed *in forma pauperis*. The matter was referred to Magistrate Judge Bana Roberts for initial proceedings, consistent with 28 U.S.C. § 636(b)(1)(B). Plaintiff was granted leave to proceed *in forma pauperis*, but was advised that he would be required to pay the full filing fee in accordance with 28 U.S.C. § 1915(b)(1), beginning with an initial partial fee of \$7.00. When plaintiff failed to pay the initial fee or show cause in writing for his failure to pay, the magistrate judge recommended that the action be dismissed without prejudice.

Plaintiff did not initially receive the Report and Recommendation because he had failed to provide the court with his change of address. On August 17, 2011, in response to his letter of August 16, 2011, a copy was mailed to plaintiff. He did not paid the filing fee or respond to the Report and Recommendation. Instead, plaintiff attempted to appeal the magistrate judge's order regarding his motion seeking leave to proceed *in forma pauperis*. The Tenth Circuit dismissed the appeal by order entered September 9, 2011, for lack of

jurisdiction.

In light of plaintiff's late receipt of the Report and Recommendation and his premature appeal, the court concluded plaintiff should have additional time within which to pay the initial partial filing fee. He was directed to pay the initial fee of \$7.00 by September 30, 2011, and was advised that if it was not paid the action would be dismissed without prejudice to refiling.

Plaintiff has not paid the fee, but instead sent a profanity-laced letter dated September 20, 2011, which objects to various things but does not provide an identifiable, persuasive reason for excusing his non-payment of the indicated filing fee. This case is therefore **DISMISSED** without prejudice.

IT IS SO ORDERED.

Dated this 17th day of October, 2011.



JOE HEATON
UNITED STATES DISTRICT JUDGE